THIRD EDITION.

THE CASE AGAINST PICKETING.

BY

W. J. SHAXBY.

LONDON:
"LIBERTY REVIEW" PUBLISHING CO., LTD.,
JOHNSON'S COURT, FLEET STREET, E.C.

1897.

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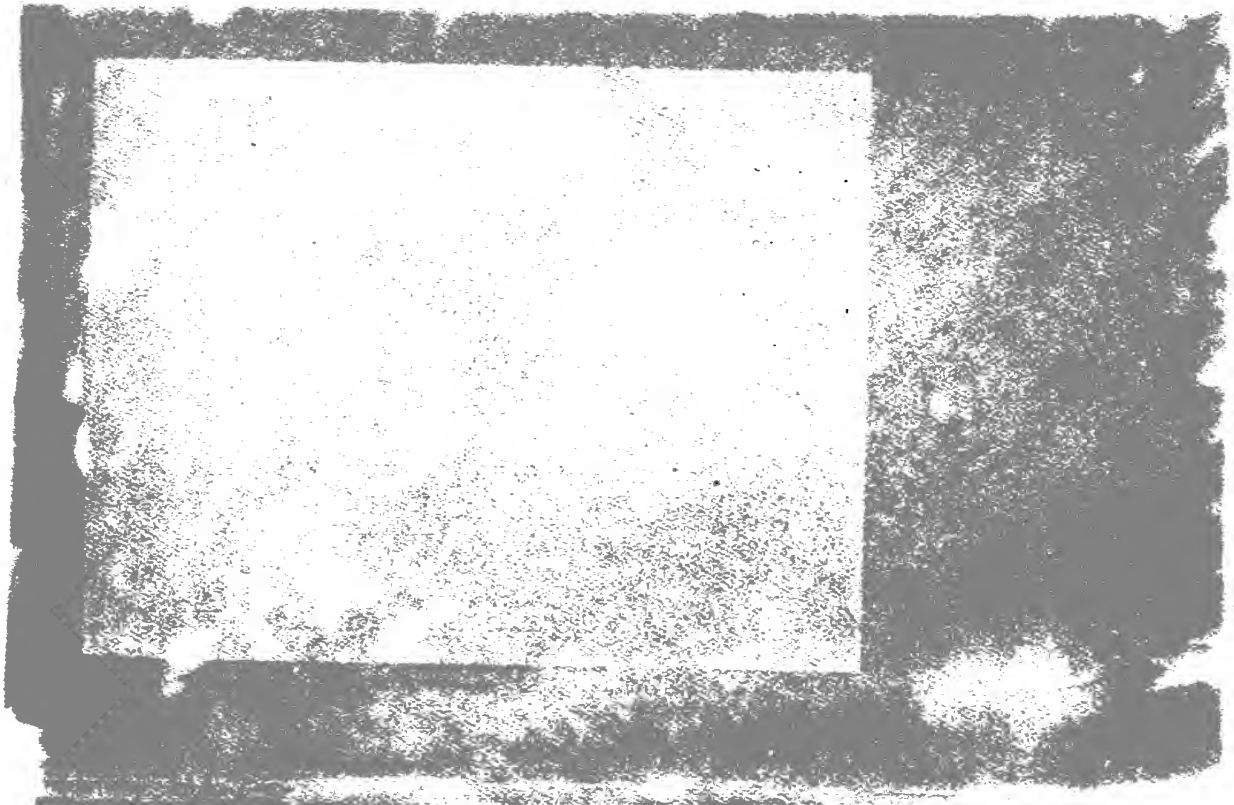

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PREFACE TO THE SECOND EDITION.

THE first edition of this book was published on September 1st, and was exhausted within three days. On September 4th the following announcement of the formation of the Free Labour Protection Association appeared in several London papers :—

A Private Meeting of influential employers and representatives of the principal Employers' Associations in the United Kingdom was held at 7, Victoria Street, Westminster, on Friday, July 16th, to discuss a proposal to form a National Organization for the Defence of Free Labour.

The chair was taken by the Right Hon. the Earl of Wemyss.

On the motion of Colonel H. C. Dyer (President, the Employers' Federation of Engineering Associations), seconded by Mr. G. A. Laws (General Manager, The Shipping Federation, Limited), the following resolution was unanimously adopted :—

> "That, in the opinion of this representative meeting of employers, it is desirable to form a Free Labour Protection Association, having for its objects—
>
> "I. To test systematically the efficiency, or otherwise, of the existing laws for the protection of Non-Unionists, and, if necessary, to obtain an amendment of such laws.
>
> "II. To watch all strikes, and ensure the observance of the law in all disputes between employer and employed.
>
> "III. To oppose all legislation injuriously affecting the trades and industries of the United Kingdom.
>
> "IV. To seek the attainment of these objects through the corporate action of the Association ; by the federation of (*a*) employers, whether individuals, firms, or corporate bodies ; (*b*) existing or future Employers' Associations for the protection of separate interests ; and in such ways as shall at any time appear necessary or desirable."

A Committee consisting of the following gentlemen, with power to add to their number, was appointed to give effect to the foregoing resolution, and to draft the constitution and rules of the Association :—

The Right Hon. the Earl of Wemyss.
Sir William T. Lewis, Bart.
Mr. H. D. Greene, Q.C., M.P.
Colonel H. C. Dyer (President, Employers' Federation of Engineering Associations).

previously audited by a person or persons, not members of the Council, to be annually named by the Council for that purpose.

6. The Council shall be regulated in their proceedings by such bye-laws as may from time to time be enacted by them, no established bye-law being in any case altered or a new one proposed without at least one month's notice of such intention being given to each member of the Council.

7. When elected at the Annual General Meeting, the Council shall proceed to choose one of their own number to be Chairman of the Council, and shall also choose a Vice-Chairman to act in his absence; and such Chairman and Vice-Chairman shall hold office for a year, and shall be eligible for re-election.

8. A Secretary of the Association shall be appointed by the Council, and his term of office and remuneration shall from time to time be determined by them. The Council shall likewise appoint and fix the remuneration of clerks and other officials, who shall be removable at the pleasure of the Council.

9. The Secretary shall conduct the general business of the Association under the control of the Council, and shall keep proper accounts of the funds of the Association, which accounts shall be examined from time to time as the Council may direct.

10. The Council shall have power to appoint or remove District Managers or Agents as may seem to them desirable, and the duties and limits of action of such District Managers or Agents shall be prescribed and defined from time to time, and their remuneration determined by the Council.

11. There shall be a Treasurer appointed at the Annual General Meeting, who shall be an *ex-officio* member of the Council. He shall have power at all times to inspect the accounts of the Association, and his signature, together with that of the Chairman, and the counter-signature of the Secretary, shall be necessary to all cheques issued by the Association.

12. The Council may appoint Solicitors, and procure legal advice as occasion arises.

13. Whenever it shall appear to the Council necessary or desirable that action should be taken with a view to the furtherance of the "Objects" of the Association, as above defined, the Council shall, if necessary, appeal to the corporate bodies and Associations who are members of the Association for special donations in respect of such action.

14. The Council may, at their discretion, for the information and guidance of members of the Association, issue from time to time reports of the proceedings of the Council, and of actions taken by the Council to carry out the objects of the Association.

July 26th, 1897.

THE CASE AGAINST PICKETING.

I.—WHY PICKETING SHOULD BE MADE ILLEGAL.

PICKETING may be defined as coercive argument. In the Labour Commission Glossary the following definition is given: "The act of men standing at the gates of mills, docks, etc., watching those who go in and out, and inducing them to strike work." The Report of the Trade Union Commission said that "picketing" consists in posting members of a trade union at all the approaches to the works struck against, for the purpose of observing and reporting the workmen going to or coming from the works, and of using such influence as may be in their power to prevent the workmen accepting work there. The Report further explained that it is by this system of picketing that the rights of combination are most liable to be interfered with.

Section 7 of the *Conspiracy and Protection of Property Act, 1875*, says: "Attending at or near the house or place where the person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate

information, shall not be deemed a watching or besetting within the meaning of this Section." This, then, prescribes legal picketing, and it may be said, without exaggeration, that such is not what goes by that name during a strike. That is more accurately described as "legalized intimidation." Lord Bramwell recognised this when he said in the House of Lords, on March 6th, 1891, that legal picketing would never pay its way. Instances are unnecessary. Every employer and trade union official knows that the actions of a body of excited men gathered outside the premises in which they have just refused to work are by no means peaceful, and that at Common Law indictable offences are committed. But everyone knows, at the same time, the extreme difficulty of arresting even the ringleaders in such a case, and the delay and expense occasioned by committing offenders for trial at Assizes. The value of an Amendment Act will lie in the fact that it will deter rather than punish. The Legislature should definitely say once for all that such gatherings and actions as constitute modern picketing are illegal and punishable. The fear of the law would then coerce into wisdom.

The present suggestion to prevent the abuses of picketing, it must be mentioned at the outset, is not directed against freedom of speech, but against the breaking of contracts. It is an endeavour to uphold the sacredness of contracts, whether individual or collective, and to find a suitable means for maintaining their security. And the means we put forward are in no way an infringement of the liberty of any law-abiding subject;

they are merely to ensure, as an act of precaution, that deserved punishment will unfailingly accompany such actions as dumb-show threatening and the terrorism of mass meetings, even when no inflammatory speech or actual violence is added. What is wanted is not to extend the principle of the existing *Conspiracy Act*, but to render the provisions of that Act more directly applicable to modern commercial and trade difficulties.

Strikes have been defined by Mr. William Allan, who may be taken to represent a high type of employer, as "the natural outcome of discontent on the part of organized labour." From Mr. H. M. Hyndman, who, personally, deplores strikes, but otherwise represents the advanced Socialists, we have the definition that strikes are "the unconscious manifestations of the revolt of the wage-earners against their conditions of life." With suggested remedial measures for strikes we are not now concerned. One of the most frictional accompaniments to every strike is picketing, which we have seen is only lawful when it does not exceed the act of watching to inform or to gain information. In this connection, therefore, a few words on strikes will not be out of place.

Strikes are a direct outcome of trade unionism and the system of "collective bargaining." Under the earlier and natural system of individual contracts there existed an antagonism between employer and employed only so far as such antagonism was natural to every kind of negotiation. And even this would in time have worn itself out with the growth of education, of reasoning

power, and of common sense. But it has not been allowed to wear itself out. Trade unionism has not only fostered it, but it has created a new and more dangerous, because irreconcilable, antagonism between itself and the whole body of employers. The friction produced by "collective bargaining" is thus much greater than when no such method existed. Collective bargaining now exists as part of our present industrial system of work and wages; not a necessary adjunct to that system, but an artificial growth that certain modern forces have developed to assist in their own evolution, but by no means a permanent or essential part of the system. Under our present system, so long as we contract in this manner for our labour supply, strikes are inevitable. When under the individualist system a workman desires, for instance, higher wages, he transfers his services to the place where he can obtain higher wages: that is, as an individual, and acting on his own initiative and responsibility, he strikes work. Similarly, when under the collective system a body of men desire —no matter for the moment whether justifiably or not— a change in their conditions of work, and an employer does not see his way to grant such a change, they strike. In the latter case, however, there are added contingencies to be considered. A fusion, as it were, of simple elements has taken place, and the result is a substance which contains several new features not to be traced in the original simple elements, while other characteristics, present perhaps in each one of the simple elements, are lacking.

There is nothing immoral in the broad fundamental principle of the right to strike; but in its certain issues lies the immorality. No individual, unless he were an utter fool, would quit fair work with fair remuneration, which he once agreed to accept, without the certainty of better. In the case of a body of men such certainty rarely exists, and striking then becomes the action of a set of misguided fools. "All things are lawful, but all things are not expedient." Freedom of combination and the right to strike are indisputable possessions, but so also must every individual man have liberty to join a trade union or not, to strike work or not, as he himself chooses.

The act of striking cannot reasonably be made illegal, although it is invariably foolish. If, however, a man on strike compels by objectionable means—and what means in the heat of the struggle, with the exception of friendly converse of man with man in privacy, are not objectionable?—compels his late fellow-worker to strike against his will, such action can rightly be considered immoral and illegal. For the act consists in inciting a man to deliberately injure himself, it being no extenuation to urge that the instigator is also himself injuring himself. And this incitement to labour-suicide is the act known as picketing.

It is argued, with much truth, that the explanatory clause of the 7th section of the *Conspiracy and Protection of Property Act* has the practical effect of nullifying the whole section in its value to employers during the excitement of a strike; but legislative efforts to amend

the section have hitherto failed. Under this section, certain acts—*e.g.*, intimidation, picketing, etc.—done with a view to compel any person (*i.e.*, either workman or master) to do or not to do anything which such person has a legal right to abstain from doing or to do are offences punishable with a maximum penalty of a fine of £20, or three months' imprisonment with hard labour. But waiting about merely for the purpose of obtaining or communicating information is not an offence within the section. In 1893 (February 16th) Mr. Secretary Asquith, Mr. Attorney-General, and Mr. Herbert Gladstone brought in a *Conspiracy and Breach of the Peace Bill.* The Bill proposed to extend section 3 of the *Conspiracy Act of 1875* by repealing the words, "in contemplation or furtherance of a trade dispute between employers and workmen." By another clause it provided, by a fine of £20 or three months' imprisonment, against the occasioning or intentionally promoting of a breach, by the use of threatening, abusive, or insulting words or behaviour, or the sending of any threatening, abusive, or insulting letter. The Bill, which never reached its second reading, failed because it was promoted in anticipation of the Labour Commission Report, and the "Liberals" of the Session of 1893 had only the idea of making political capital—as in the case of the formation of the Labour Department—by a betrayal of the confidential matter at that time under the consideration of the Commission appointed by a Conservative Government. The premature birth of the Labour Department, an heir which

the late Mr. Mundella hoped would bring him great political renown, gave to an ungrateful country a child of a weakly Socialist constitution, an object not so much of scorn as of pity. And it is no doubt a fortunate circumstance that this Bill was killed in its very early stages. It died because its time was not ripe, and because the promoters were visibly actuated by self-seeking motives.

At the present time there is a public demand for some Parliamentary action upon this question of picketing. Probably the large number of recent cases in which the Bench has decided against the trade union officials accounts in part for it. The following resolution, passed in February last under the auspices of the Aberdeen Trades Council, is backed by far more than merely local support :—

> "That this meeting of trade unionists and workers of Aberdeen agree to petition Her Majesty's Government to bring in a Bill during this session to amend the law relating to Conspiracy, Intimidation, and Breaches of the Peace, so that a more definite and uniform interpretation of the law may be arrived at."

And it is more than a coincidence that about the same time a Conference, called by the National Free Labour Association, should resolve :—

> "That this Conference of representative working men from all parts of the country, in view of the alarming results from intimidation during labour

disputes, and for the better protection of overwhelming numbers of workmen who are thus from time to time sought to be intimidated, is of opinion that an amendment of the *Conspiracy and Protection of Property Act, 1875*, is rendered imperative, and believes that the necessary relief would follow the repeal of clause 2, section vii., of that Act; such clause, which is an exemption that opens the door to resultant illegalities and dangers, being held to justify picketing by those who, in consequence of this interpretation of the clause, make it an excuse for openly resorting to so dangerous and tyrannical a method of industrial intimidation."

Also about the same time, the Chamber of Shipping of the United Kingdom urged that—

"In consequence of the hindrance to men willing to labour caused by the obstruction of organized pickets, it is desirable that a member of Parliament should be invited to introduce a Bill to amend the *Conspiracy and Protection of Property Act, 1875*, so as to render illegal the practice of picketing in force during strikes and labour disputes."

Finally, the forthcoming Thirtieth Trade Unions Congress, to be held in Birmingham on September 6th and following days, will be asked to express the opinion—

"That the Conspiracy Laws, as applied to workers, are indefinite, ambiguous, and generally

unsatisfactory, and further to regret that many recent decisions in law courts affecting trade unions have shown considerable bias on the part of some of our judges and juries, and that in consequence a general opinion prevails amongst workers that it is next to impossible, under the present state and administration of the law, for members of trade unions to obtain even-handed justice."

The proposed resolution adds :—

"We therefore urge upon the Parliamentary Committee to take steps to secure a thorough and radical alteration of the Conspiracy Acts, and, further, to promote a Bill before Parliament, having for its object the reform of the jury system, so as to make it possible for all workers, having no legal disabilities, to sit and act as jurymen in all civil and criminal cases. And, further, that it be an instruction to the Parliamentary Committee to issue circulars to all trade unions, and branches of trade unions, urging upon them the desirability and necessity of approaching their local members of Parliament with a view of inducing them to support such action in Parliament."

II.—HOW TO DEPRIVE PICKETING OF ITS "POWER AND STING."

THE following practical suggestions are submitted to the consideration of legislators, employers of labour, and non-unionist workmen :—

(1) An amendment to the *Conspiracy and Protection of Property Act, 1875*, giving power to the police to "move on" and disperse a crowd of persons causing an obstruction, with the ostensible or avowed object of picketing—viz., to insert, after the last word of the last paragraph of section 7, the words, "unless such attendance cause an obstruction of the highway at or near such house or place."

By way of illustration: the police can at present disperse a crowd waiting to gain admittance to a theatre. Should, however, a strike of stage carpenters and scene-shifters be in progress at that theatre, all the carpenters in London may assemble for the purpose of picketing, but the police have no authority to remove the obstruction, unless the law relating to riot and breach of the peace is violated.

(2) An amendment to the *Conspiracy and Protection of Property Act*, embodying the recommendation of the

Labour Commission—viz., That the first sub-section of section 7 read thus: "uses or threatens to use violence to such other persons, or his wife or children, or injures his property," omitting the ambiguous word "intimidate."

(3) An amendment of the law dealing with unlawful assembly, to bring offenders under summary jurisdiction, instead of, as at present, leaving them for trial at the next Assizes on an indictable offence. As the Labour Commission has stated: "Where the practice of 'picketing' exceeds the bounds of information and peaceable conversation, and takes the shape of besetting the entrance or approaches of a factory or works in a threatening manner.....apart from any threats addressed to individuals, the offence of unlawful assembly is committed. Assaulting or forcibly obstructing workmen desirous of entering the 'picketed' works is, of course, a breach of the peace; and if a picketing party shows a manifest intention to do such things, then every member of it will.....be guilty of the offence of unlawful assembly, even if no assault is actually committed."

The main object of this suggested legislation is, as already stated, not punishment, but prevention. If the temptation to picket by such methods as that of unlawful assembly is removed, the inevitable feuds and criminal acts which immediately arise are rendered less inevitable, if not impossible, and less consequential, if not improbable.

During a recent strike a small boy sat on a fence

near the works concerned and ate chocolates, whistling in the gladness of his heart between each toothsome morsel. In reality he was a "picket," and was marking and counting the men who entered the works. It is, of course, not suggested that such actions be prohibited by law. Legislation can deal only with actions, either by way of punishment or prevention. It considers motives only when the criminal intention is obvious. But if, as a result of that boy's action, the officials and members of the trade union which promoted the strike go in a body to the homes of those men, or meet them and proceed to pummel their working desires out of them, offences against the present laws have been committed, and can be satisfactorily dealt with. The strong probability, however, under the suggested amendment, is that the workers will not be so interfered with. Interference is the result of bad blood inciting to bad blood. Little boys, full of chocolate, may talk into all the phonographs in Europe, and all the phonographs in Europe may let out their secrets to meetings of socialists and agitators throughout the world, and no head-punchings to the peaceable workers will ensue. But set a crowd of idle loafers, persons who, for a fancy grievance, have recklessly thrown themselves out of work and their wives and children upon charity and into starvation—set these to watch a sensible, steady workman, and the fear of nothing short of flogging will deter them from heaving brickbats from behind a wall—if they can. Prevent the opportunity, and you check the crime.

The present time seems a most favourable opportunity for legislation on this question. The disclosures of violence in the recent picketing case of *Bailey* v. *Pye* have brought down a storm of indignation, and shown conclusively that the press, the judicial bench, and public opinion are strongly against the lawlessness of acts committed by trade unions under their assumed legislative protection. Parliament should at once correct mistaken impressions on the question of how far picketing is lawful, by a few explanatory clauses added to the existing law, for the guidance of the administration of that law, and for the information of the public.

That, except to the professional agitator, a Bill somewhat on the lines indicated will be most acceptable to all classes of the community cannot be doubted. And although there is no royal or cut-and-dried remedy for strikes, an Act giving effect to these suggestions would have a beneficial deterrent result, and would more especially check many of the evils of latter-day trade unionism, and the malicious attempts that are constantly being made to render freedom of labour impossible.

III.—THE COLLECTED WISDOM OF ROYAL COMMISSIONS.

(a) The Trade Union Commission.

THE Trade Union Commission of 1867, in a neat paragraph, points out that picketing is quite unjustifiable :—

> "So far as relates to members of the union promoting the strike, the pickets cannot be necessary if the members are voluntarily concurring therein ; so far as relates to workmen who are not members of the union, picketing implies in principle an interference with their right to dispose of their labour as they think fit, and is, therefore, without justification ; and so far as relates to the employer, it is a violation of his right of free resort to the labour market for the supply of such labour as he requires."

After adducing conclusive reasons from the evidence before them, the Commission definitely reported :—

> "We have no hesitation in expressing our opinion that the abuses which have been proved to arise out of the practice of picketing ought to be care-

fully and uniformly repressed"; but added: "We are not prepared to propose new legislation on the subject of picketing, believing that the existing law is, at all events, equal to repressing flagrant abuses, and having no definite proposal to make as to rendering it more effectual."

The thirty years which have elapsed since this Report have afforded unmistakably clear evidence of the suitability of the legislative proposals in the foregoing pages. Of the need for them there can be no doubt.

Mr. Baron Bramwell, on the trial of the persons engaged in the tailors' strike of 1867 (*Regina* v. *Druitt*), laid down the law to the effect that picketing, as according to the evidence before him it was ordinarily practised, was a criminal offence. His actual words in the charge to the jury are as follows:—

"The liberty of a man's mind and will to say how he should bestow himself and his means, his talents and his industry, was as much a subject of the law's protection as was that of his body. Generally speaking, the way in which people had endeavoured to control the operation of the minds of men was by putting restraints on their bodies, and therefore we had not so many instances in which the liberty of the mind was vindicated as was that of the body. Still, if any set of men agreed among themselves to coerce that liberty of mind and thought by compulsion and restraint, they would be guilty of a criminal offence—namely, that of conspiring against

the liberty of mind and freedom of will of those towards whom they so conducted themselves. He was referring to coercion or compulsion—something that was unpleasant and annoying to the mind operated upon; and he laid it down as clear and undoubted law that, if two or more persons agreed that they would by such means co-operate together against that liberty, they would be guilty of an indictable offence. The public had an interest in the way in which a man disposed of his industry and his capital; and if two or more persons conspired by threats, intimidation, or molestation to deter or influence him in the way in which he should employ his industry, his talents, or his capital, they would be guilty of a criminal offence. That was the common law of the land, and it had been in his opinion re-enacted by an Act of Parliament passed in the sixth year of the reign of George IV., which provided, in effect, that any person who should by threat, intimidation, molestation, or any other way obstruct, force, or endeavour to force, any journeyman to depart from his hiring, or prevent any journeyman from hiring, should be guilty of an offence.....A statute of 1859 .....said that should not be so if they did what they did in a reasonable and peaceful manner..... for the purposes of persuasion."

Eloquent as is the minority report of Mr. Thomas Hughes and Mr. Frederic Harrison, it is not convincing, and calls for little comment, except on one point.

Indeed, it strengthens the case for legislation against picketing.

The one point worthy of attention is the case of the employers' black list. The two minority say :—

> "A's workmen strike; he sends round a list of their names to B, C, and D, with a request that they be not employed. The workmen on their side put two of their number near the gate of A's workshop, who inform all who apply that a strike is on foot, and beg them not to seek employment of A. It has been proposed to make this act of the workman a new special misdemeanour. But it is obvious that no statute whatever could place A in prison for communicating to B the names of his workmen. The proposal, therefore, would, if effectual, deprive the men of their power of picketing, but leave the employers in full possession of the 'black list.'"

This introduces a converse to our suggestion, which we do not hesitate to state plainly. If legislation is necessary to protect free labour from the harassments of malicious fellow-workers who abuse their rights of combination, it must also protect trade unionists from the malice of certain employers—a very small minority, we hope. It must, in a word, at the same time abolish the black list.

At common law, blacklisting is already illegal. In 1866, for instance, in America, where the principles of common law have been inherited from England, a judge

declared against some Connecticut employers who black-listed a workman, that "any conspiracy to prevent, obstruct, or hinder any man from putting his labour on the market is highly criminal at common law." There could, therefore, be no valid objection to expressing this clearly in any Act which defines picketing to be illegal. At present we are not going the length of asking for a law to that effect, believing that the remedial measures we suggest are sufficient to check the evil, and to so react upon employers that they will find a black list useless and unnecessary.

Mr. James Booth, C.B., who signed the Majority Report above quoted, strenuously urged his fellow-Commissioners to report the desirability of rendering picketing illegal, and embodied his opinion in his draft Report as follows:—

> "The mere fact that in order to render a strike effectual it is necessary to resort to the system of pickets affords conclusive evidence that the strike is not altogether a voluntary proceeding, and that it wants the character, therefore, which alone can render it a combination such as ought to be tolerated by law.....
>
> "The notion of undue coercion is, therefore, essentially involved in the system of picketing; and considering its liability to abuse, even if conducted in the least objectionable manner, and bearing in mind the paramount importance of protecting the workman in the free disposal of his

labour, and the employer in unrestricted access to the supply of labour wherever it is to be purchased, we have no hesitation in expressing our opinion that picketing ought to be sternly repressed by law."

Mr. Booth's definite suggestion to make picketing a criminal offence was as follows :—

> "It appears from the report of the proceedings, and of the law laid down by Mr. Baron Bramwell on the trial of the persons engaged in the tailors' strike, above referred to, that picketing, as according to the evidence before us it is ordinarily practised, is a criminal offence at law; and it may perhaps be sufficient that the proposed Bill should declare the law to be to the effect laid down by the learned judge on that occasion; but we think that no doubt should be allowed to remain that picketing is a criminal offence on the part both of the persons organizing or promoting the picket, and of the persons acting as picketers, or otherwise taking an active part in enforcing the picket, and that it ought to be summarily punishable by fine and imprisonment."

We must confess that the criticisms of the Minority Report on so direct but tactless a measure as this are sound. As the minority observed (and since Mr. Booth was not supported by the majority, we may take this as their, at least tacit, opinion also) :—

> "It is plain that no real [by which they mean

'direct'] prohibition of the practice would be possible unless we were to take measures repugnant to common sense. The only result of legislative repression of picketing would be to render the practice secret, and to make the men on picket far more numerous, more vigilant, and more ready to resort to coercion. It cannot escape notice that it would be impossible to define the offence of picketing in any reasonable limits. If definite, the provision would be futile; if indefinite, it would be a constant source of oppression."

It is not possible to pass a crude law, saying in so many words, "picketing is unlawful."

One of the ultimate effects of this Trade Union Commission was the *Conspiracy and Protection of Property Act, 1875*. We quote below the two sections with which we are now concerned.

Sections 3 and 7 of the *Conspiracy and Protection of Property Act, 1875*, 38 & 39 Vict., c. 86, are as follows:—

Section 3. An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy, if such act committed by one person would not be punishable as a crime.

Nothing in this section shall exempt from punishment any persons guilty of conspiracy for which a punishment is awarded by any Act of Parliament.

Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the State or Sovereign.

A crime for the purposes of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable, under the statute making the offence punishable, to be imprisoned either absolutely, or at the discretion of the Court as an alternative for some other punishment.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person.

Section 7. Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority,—

1. Uses violence to or intimidates such other person, or his wife and children, or injures his property; or,
2. Persistently follows such other person about from place to place; or,

3. Hides any tools, clothes, or any other property owned or used by such other person, or deprives him of, or hinders him in, the use thereof; or,
4. Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or,
5. Follows such other person with two or more persons in a disorderly manner in or through any street or road,

shall, on conviction thereof by a court of summary jurisdiction, or on indictment, as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

(b) The Labour Commission.

The official summary of suggestions, made in evidence before the Labour Commission of 1891–4, to amend the two sections of the *Conspiracy Act* quoted above, is as follows :—

Proposed Amendments.

1. To define the terms "intimidation," "persistently follows," and "besets," in the text of the Act.

2. That the said definition of "intimidation" should include such threats only as are accompanied by actual physical violence.

3. That the said definition should include such acts only as are calculated to put a man in reasonable bodily fear, or as would justify a magistrate in binding over the offender to keep the peace.

4. That the said definition should cover the moral intimidation exercised by the assemblage of more than three men at a given spot for the purpose of picketing, the explanatory clause, "attending at or near the house," etc., being repealed, and the liberty of "giving information" being confined to the right of holding public meetings and canvassing the workmen's own homes.

5. To make it illegal to strike against the employment of free labourers.

6. To disallow cumulative penalties under the Act.

7. To increase the penalties for offences under the Act.

8. To deprive judges of the power of withholding the option of a fine, except for what a jury may consider to be an aggravated offence.

9. That the punishment for "intimidation"

should be imprisonment without the option of a fine.

10. To make the definition of intimidation cover the following acts on the part of employers: black-listing, eviction at less than three months' notice, dismissal without assignment of a valid reason, and engagement of men during a strike without informing them of its existence.

11. To make collection of subscriptions in the streets illegal.

12. To repeal the entire section 7.

The Commission received much evidence in the case of strikes connected with dock and maritime labour, of picketing which caused, or was, at any rate, accompanied by, much violence and intimidation. It was also clearly brought out by employers that, "inasmuch as the number of persons who may attend to communicate information.....is not limited by the Act, it is practically very difficult to fix the point at which communication of information becomes intimidation, and that for this reason it is not easy to obtain any conviction for intimidation," and in this way the effect of the 7th section is virtually nullified. On the other hand, the employed objected to the clause as being too loose, and affording scope for convictions against innocent persons.

The Commission, therefore, made the following recommendations:—

"(1) That non-unionist workmen should in all cases be protected, so far as possible, by the public

authorities from anything approaching to violence or forcible obstruction.

"(2) That the first sub-section of section 7 of the *Conspiracy and Protection of Property Act, 1875*, should be amended so as to read thus: 'Use, *or threatens to use*, violence to such other person, or his wife or children, or injures his property,' omitting the ambiguous word 'intimidate.'"

To these suggestions the Commission added the following important remarks:—

"It was suggested on the part of the employers that picketing is apt to become collective intimidation, and such intimidation is not the less effective though not directly addressed to any person in particular, and a desire was expressed that the law might in some way be strengthened in order to meet this evil. We are of opinion, however, that the existing law is sufficient if impartially and firmly administered; but there is reason to doubt whether it is in all cases completely understood. Where the practice of 'picketing' exceeds the bounds of information and peaceable conversation, and takes the shape of besetting the entrance or approaches of a factory or works in a threatening manner, we are advised that, apart from any threats addressed to individuals, the offence of unlawful assembly is committed."

The offence of unlawful assembly is thus defined, and in accordance with the authorities, in the late Sir James Fitzjames Stephen's "Digest of the Criminal Law":—

"An unlawful assembly is an assembly of three or more persons—

"(a) With intent to commit a crime by open force; or,

"(b) With intent to carry out any common purpose, *lawful or unlawful*,

in such a manner as to give firm and courageous persons in the neighbourhood of such assembly reasonable grounds to apprehend a breach of the peace in consequence of it."

It is a somewhat significant criticism upon the value of the Labour Commission Minority Report that in it no mention is anywhere made of this particular subject. This fact in itself is sufficient to prove that the socialist agitators consider the present state of the law eminently suited to their purposes.

IV.—CONFLICTING INTERPRETATIONS OF "INTIMIDATION."

It is desirable, at this stage, to supplement official utterances by testimony from miscellaneous quarters—by some direct evidence as given before the Labour Commission, by decisions given from the Bench, by suggestions from persons really acquainted with picketing practices, and, finally, by a brief glance at the legal customs and extent of picketing, and similar practices, in foreign countries, and the attitude of the Legislature towards them.

The following is Sir Frederick Pollock's interpretation of section 7, prepared for the use of the Labour Commission :—

> "There is no doubt that the intention of this section was to draw the line between legitimate and illegitimate picketing.....The enactment is sufficiently clear, with one exception ; and, subject to that exception, the difficulties that occur in its application are such difficulties in obtaining sufficient evidence against ascertained persons as cannot be abolished by the wisdom of any Legis-

lature, or the skill of any draftsman. The exception lies in the word 'intimidates.' Must intimidation be a threat of something which, if executed, would be a criminal offence against persons or tangible property? Or does it include the threat of doing that which would be civilly, though not criminally, wrongful? Or, lastly, can it include the announcement of an intent to do, or cause to be done, something which, without being in itself wrongful, is capable of putting moral compulsion on the person threatened? A specially-constituted Court of the Queen's Bench Division, proceeding on the intention of Parliament, as shown in the *Trade Union Act of 1871*, as well as in the Act of 1875, has pronounced the first of these interpretations to be the correct one.....It is to be regretted that (notwithstanding express warning uttered by Members of Parliament learned in the law when the Bill was in Committee) the language of the Act of 1875 was left uncertain."

Sir Frederick Pollock adds that he is not aware of any authority (apart from interpretation of statutes) to show what would be held to amount to intimidation. "Upon principle," he says, "I should think intimidation would mean any threat, calculated to affect a man of common sense and firmness, of doing or procuring to be done to his prejudice anything either punishable as an offence or civilly wrongful."

Mr. G. A. Laws, the General Manager of the Shipping Federation, in his evidence before the Labour

Commission pointed out that the mere assemblage of 150 or 200 men as pickets, with the avowed object of persuading men not to take certain work, was enough to intimidate those who wished to take it. A threat conveyed in a look, though not recognised by the law, might prove quite as effectual as if stated in words. Especially in the case of a sympathetic strike, it should be illegal for large bodies of men to assemble for the sole purpose of preventing other men from working, and the fact of doing so should be considered to amount to intimidation. The definition of intimidation suggested by Mr. Laws was that contained in the *Irish Crimes Act*, now repealed—viz., "any words or acts intended and calculated to put any person in fear of any injury or danger," etc. Under the proposed amendment, picketing should be allowed to the extent of posting not more than three men at any one place, to explain the circumstances of the strike, and use reasonable persuasion towards non-unionists. It should be illegal, however, to place pickets on board ship.

Mr. H. C. Smith, on behalf of the proprietors of Hay's Wharf and Dock, denied that the sole purpose of picketing was to persuade men to refrain from work. On the contrary, pickets were not selected for their eloquence, but for their size and strength. The argument employed was a threat in nine cases out of ten, and when it was not a threat it was nearly always ineffectual. The witness, therefore, drew the conclusion that terrorism, and not persuasion, was the main principle on which picketing was conducted during a strike.

Some extracts from the famous charge of the Recorder of the City of London (Mr. Russell Gurney), delivered in reference to the Cabinet Makers' case in 1875 *(Regina* v. *Hibbert)*, will show that the spirit in which the Act of that year was passed admits of no question as to the present legality of peaceful picketing :—

> "The question is, not whether they have endeavoured to take their stand by themselves refusing to work, and by persuading others not to work—this they have a right to do; but the question is whether they have tried to effect that object in the way that is forbidden by the Act, and with that purpose. That they did watch the place of business, probably there is no doubt; but there are some purposes for which they had a perfect right to watch. When a contest of this sort is going on, it is not unusual, I believe, to watch in order to see that none of the men who receive what is called 'strike pay' are also receiving wages from the employer.....But if, on the contrary, they were only there peaceably to warn persons that there was a strike, and peaceably to tell them that it would be to their interest to join their strike, and not to adopt a system which, whether rightly or wrongly, was that they considered otherwise than advantageous to their interests—if they merely did that, I cannot see any ground upon which this criminal charge exists."

Mr. Baron Cleasby in this case laid it down that way-

laying or offering money to workmen not to accept employment may be illegal.

On July 15th, 1876, Mr. Baron Huddlestone, in pronouncing judgment upon a picketing case, involving charges of intimidation *(Regina* v. *Bauld)*, arising out of the engineers' strike at Erith, after pointing out that the 7th section of the *Conspiracy Act* excludes from criminal restraint action for the purpose of obtaining legitimate information, added a serious warning—a warning even more greatly needed to-day :—

> "It is so dangerous a thing to do at all," he said, "that it is difficult to guard against the abuse of the practice, and, therefore, if you assert a right to 'picket,' you are almost certain to get into difficulty, for, whatever you may intend by it, others will go beyond it. Most certainly, watching and besetting, unless it is only for information, is illegal. If, then, you do not wish to go beyond the law, it is better to avoid such acts altogether, as it is illegal to follow anyone about in the streets."

He further stated "that the intention of the legislature, in inserting this clause in the section, was for the purpose of enabling workmen on strike to find out whether any of their fellow-workmen who, as members of their trade union, might be drawing strike allowances, were 'traitors' to their union, and were going back to work, and so getting money from both sides." It is thus to be inferred that persuasion by pickets is illegal.

This appears to go farther than the decision given

by Mr. Baron Bramwell in *Regina* v. *Druitt*, in 1867, before the Act was passed. He laid down that the test of the legality of picketing was whether it was done with the object merely of "reasonably arguing with and persuading" the persons addressed, or of "coercing and intimidating them," thus making a distinction between persuasion and coercion, the former being quite legitimate.

In *Judge* v. *Bennett* (1888) Mr. Justice Stephen is reported to have said that "intimidation may mean any kind of threat, provided it made the person against whom it was used reasonably afraid."

In January, 1891, the celebrated decision of the Recorder of Plymouth (Mr. Bompas, Q.C.) was pronounced. Certain strike-leaders in Plymouth endeavoured to force an employer, Mr. Treleaven, to dismiss his free workmen by threatening to order a strike of his unionist workmen if he refused to comply with their demand. The actual words used were these: "Inasmuch as Mr. Treleaven still insists on employing non-union men, we, your officials, call upon all union men to leave their work. Use no violence, use no immoderate language, but quietly cease to work, and go home." The question before the Recorder was whether this action on the part of the strike-leaders constituted intimidation within the meaning of the *Conspiracy and Protection of Property Act.* Mr. Bompas decided that it was intimidation in this sense, on the ground that it was a strike not to benefit the workmen, but to injure the master. He held that a strike to benefit workmen was

a legal combination, but that a strike to injure an employer was an illegal combination.

The *Times*, commenting on Mr. Bompas's decision, said: "It decides, in effect, that every strike organized for the purpose of crushing free labour—that is to say, the majority of the strikes undertaken by the New Unionism—is illegal, and can be made the subject of criminal proceedings."

On appeal, however, Mr. Bompas's decision was reversed by the Court of Appeal, the judges of which held that "intimidation" should be confined to the use of violence to the person, or to actual damage done to property, and they refused to recognise that a contingent injury to the business of an employer came within the scope of intimidation.

The following two cases show the powers of the Police Act. In the words of a witness (Mr. A. Wilkie, representing the Associated Shipwrights' Society) before the Labour Commission: "A dispute occurred in Glasgow three or four years ago, and we stationed a member as a picket at a particular point; and the constable said to him: 'You are not allowed to intimidate workmen here, either by your presence, or otherwise. You are hereby warned,' etc. That is, their mere presence was objected to. The picket at once reported the matter at the office, and the officials demanded an explanation from the superintendent of the police, and he upheld the constable. The shipwrights placed the matter in the hands of their law agents, who wrote to the Chief Constable at Glasgow, and carefully explained the exact circum-

stances. In reply, Captain Boyd, the Chief Constable, wrote: 'I have instructed the superintendent of the district only to interfere if any intimidating language or action is used towards any of the employees, or if any obstruction or annoyance is caused to anyone in contravention of the 149th section of the *Police Act*, sub-section 7.'"

The case previously referred to of Mr. John Judge, of the Leeds Branch of the National Union of Boot and Shoe Operatives, is of considerable interest. This official was convicted on the sole ground, he stated, of having written a letter to an employer to the effect that, if he continued to discharge men because they were seen speaking to him, his men would be withdrawn, and his premises picketed. This was held to be an illegal threat, and Mr. Justice Stephen emphatically stated that a threat causing any kind of fear was an offence. His decision, however, was overruled by the Court of Appeal. Mr. Judge, in criticising his case before the Labour Commission, considered that the use of such language should be dealt with under the ordinary *Police Act.*

Finally, a brief summary of some quite recent cases agitating the labour world will afford a very strong commentary on some of the preceding opinions.

The case of *Bailey* v. *Pye* is fresh in the public mind. Briefly, it is as follows:—

The case occupied the attention of Mr. Baron Pollock and a special jury for three days in January last. The plaintiffs, Messrs. J. and W. O. Bailey, glass merchants,

silverers, and bevellers, claimed damages for injury to business by the acts of the defendants, the members of the National Plate Glass Bevellers' Trade Union, of which Pye was secretary, and they also demanded a perpetual injunction to restrain the defendants from a repetition of their unlawful and malicious conduct. Until this dispute, the plaintiffs had had no labour troubles, as they had not objected to employ trade unionists and had paid rates which accorded with trade union demands. In September, 1895, however, the firm arranged with an apprentice, on the expiry of his indentures, to employ him as under-foreman, and to pay him by the hour, instead of by the piece. He accepted the terms offered; but the Union ordered that he should be paid piece rate or dismissed. The firm received the Union secretary in interview, but declined to cancel the agreement with their employee. The Union thereupon compelled a strike. The following day the firm received a deputation of strikers, who, on matters being explained to them, expressed a desire to return to work. Messrs. Bailey agreed to take them all back, with the exception of one man, who had assaulted one of the old hands for continuing to work. The Union Executive, however, determined that all must be taken back or none. Messrs. Bailey refused, and within half-an-hour their premises were "picketed" by their own men and by strangers. In the course of the Union's proceedings several serious assaults occurred, and some of the assailants were imprisoned for nine months and shorter terms.

At the trial, in January, the defendants' case was so bad that the late Home Secretary, their leading counsel, offered no explanatory evidence, but agreed to accept an adverse verdict, consenting to judgment against his clients for a total of £1,217—viz., £674 damages, and £543 costs, together with the granting of a perpetual injunction as asked for.

Messrs. Bailey have since recovered the net sum of £5, as a result of executions levied against the principal defendants; but there exist no further means of recovering from the funds of either the Bevellers' Union or of the ninety-nine other trade unions who gave financial assistance to the picketers.

In the firm's own words: "To obtain simple liberty of ourselves and men, we suffered seven months' picketing and a direct loss of over £2,000."

As the *Times* remarked, this case—

> "Throws an ugly light on the custom of 'picketing' as it is too often applied in actual practice. In theory, nothing can be more innocent. 'Picketing' is limited to moral suasion; but, as the history told in Baron Pollock's Court together with many previous histories of a similar kind shows, in fact the suasion employed often amounts to organized intimidation.....The Union appear to have applied to other unions for assistance in fighting the case out, and to have declared in a report that, until this was done, 'the power and sting' of picketing was taken away. Whatever changes may be desirable in the law affecting trade unions, it is very earnestly

to be hoped, not only in the interests of our commercial prosperity, but in those of our individual liberty, that the 'power and sting' of picketing will never be restored by sanctioning, however indirectly, practices such as these adopted against Messrs. Bailey and their workmen."

Mr. James Mawdsley, who signed the Labour Commission Minority Report, gave the workers some significant advice on this case:—

"Those who talk about altering the law will be well advised if they think twice before acting once. There are a good many people occupying influential positions who would like an alteration of the law as well as some of the workers, but in a different direction, and it is just possible that were the Act put in the melting-pot it might come out more stringent for the workers than it is at present. A good rule by which to judge of a law is to see how it would affect both sides. In the case decided last week the glass bevellers considered that they had right to follow the employer struck against in his business relations with other firms, and if the law as it at present stands does not allow this, they think it should be altered to do it. If that were done, then it would also allow employers to follow their strike hands to other shops they might get into. But if an employer did this he would be held up as a monster of iniquity. The law at present allows the strike hands to picket the neigh-

bourhood of a firm struck against for the purpose of giving or obtaining information. It is more than probable that a re-casting of the measure would give no more than this, whilst it is possible that it might do less."

We are glad that at least one trade unionist understands the blow to the abuses of trade unionism which the carrying out of our suggestions would give.

In July Mr. Mawdsley, in a Manchester newspaper, commented on the sentence of one month's imprisonment passed upon men who, having struck at a mill at Springhead, near Oldham, picketed the place, and were convicted at Bradford Quarter Sessions on the charge of attempted intimidation of a workman. He again warned his readers of the limits to picketing practices, and pointed out that "if a man who is working at a mill where the regular operatives are on strike objects to being persuaded or talked to in any way, the law holds that he has a perfect right to be let alone, and to enjoy the freedom he desires, and that any attempt to persuade him under such circumstances constitutes an interference with the liberty of the subject." This, we believe, is no more generally known amongst employers than amongst employed. One of the main objects of this book is to bring to employers the knowledge of their legal rights on this question. In very many abusive cases no prosecution takes place, because neither the employer nor the public generally are aware of the exact state of the law, and because the

employer, with some degree of justification, fears the judgment of sentimental public opinion upon the action he would otherwise bring.

Other recent and typical cases, too fresh to need detailed reference, may be briefly summarized. Against the Kentish Town pickets of the Pianoforte, Harmonium, and American Organ Society, and the Amalgamated Society of French Polishers, Mr. Wernam (piano manufacturer), about February last, was awarded £300, and Mr. Lester, his foreman, £20, in compensation for unlawful, malicious interference with their business. (Lord Bramwell, it may be remarked parenthetically, once defined "malicious" as "without lawful excuse.") The appeal to the Higher Court was dismissed.

In Dublin, in March, the Secretary of the Dock Labourers' Union seems to have caused the dismissal from his employment of a recalcitrant member of the Union who had joined a rival organization. The magistrate, however, held that neither the language used nor the act done came within the meaning of the word "intimidation" in the 7th section of the Act of 1785, and dismissed the case, but would not give costs.

In May five journeymen tailors at Leeds were fined heavy sums, and one of them was sentenced to a month's imprisonment for ruffianly "intimidation" during the Jewish tailors' strike.

The Stipendiary Magistrate of Birmingham, Mr. Colmore, in June, sentenced a brass polisher to

fourteen days' imprisonment (remarking that a fine was useless in such cases) for having intimidated another brass polisher, with a view to preventing him from working for Messrs. Evans and Co., who had incurred the ill-will of the Workmen's Association by refusing to join a trade alliance. At Southwark a farrier was fined, including costs, £7 14s. for intimidating two non-union farrriers in Blackfriars during the recent strike.

Finally, it need only be mentioned that charges of trade union intimidation during the present engineering dispute (which commenced in July, 1897) have been dealt with at Southwark, Greenwich, Woolwich, and other London Police Courts, and at Birmingham, Leeds, etc., and that the defendants have in some cases been leniently bound over, in others committed—but not always with hard labour—for seven days, twenty-one days, and, in one case at least, to one month's imprisonment, and in other cases fined sums varying from 10s. to £4, with costs. As in several instances Appeals have been lodged, we shall probably hear more of some of the cases.

To show the prevailing magisterial tone throughout the country, it is sufficient to record a few of the remarks uttered within the last week or two by the Stipendiary Magistrates in delivering their decisions :—

Mr. T. H. Colmore (Birmingham) said that intimidation was used by the defendant for the purpose of inducing complainant to leave his work, and he should therefore convict; and as he had invariably held that a

fine was no punishment in such cases, the defendant would have to go to goal for fourteen days without hard labour.

Mr. Paul Taylor (Greenwich) agreed to a suggestion that the men should be bound over, remarking that conduct such as that the defendants were charged with could not be tolerated in a free country. If they had a grievance, they could express it; but resorting to intimidation constituted an offence which the law regarded as very serious, and for which heavy penalties were imposed. There was nothing he more disliked than to send a respectable man to prison, but if magistrates failed to do so in such cases, men would be unable to give effect to their right to dispose of their labour as they liked.

Mr. Kennedy (Woolwich) said that interfering with workmen getting their living would not be tolerated in this country. If serious injury had been inflicted, he would have visited it with imprisonment. He fined the defendant £4 and 2s. costs, or one month. On another occasion Mr. Kennedy remarked that there was a good deal of intimidation abroad, and refused bail.

Mr. De Rutzen (West London), in pronouncing his decision in the cases arising out of the strike at Messrs. Thornycroft's, said: "I am not called upon to say anything about trade unions or strikes. Every man may refuse to work if he thinks he can get on better without it. But there is an Act of Parliament called the *Conspiracy and Protection of Property Act*, and I suppose that there is no Act of Parliament which is better known

to working men. From the card containing instructions to members picketing, which was handed to me yesterday, I am satisfied that every one of you men knew perfectly well what you might do and what you might not do.....Life would be absolutely unbearable if men were habitually followed in the way you unionists have pursued these non-unionists. Long experience has convinced me that it is useless to impose a fine upon men who are acting under the orders of a union. The fine is invariably paid by the union, leaving no kind of personal responsibility upon the individual who commits the wrongful act. The only way to punish you is by sending you to prison, and I therefore order each of you to be imprisoned for twenty-one days."

Mr. Stansfield (Leeds) concurred in the remarks of his brother magistrates by stating that to attempt to prevent a man from going to his work was absolutely the most wicked thing one workman could do to another.....It was, in his opinion, such a wicked thing that the infliction of a fine would not be the proper way to meet it, and if personal violence had been used the defendant would have had to go to prison with hard labour. As it was, he would have to go to prison for fourteen days.

These instances tend to suggest a conclusion that the employers engaged in the present engineering dispute have at least no cause for recrimination against the Bench; but it must be remembered that, from an employer's point of view, the difficulty is not the operation of the law, once it is set in motion, and in flagrant

cases; but what employers need is a readier means of invoking such operation. The cases recently dealt with were clear infringements of the law. Many hundreds of less gross cases—but, when the law is fully comprehended, none the less evident—are not brought into Court, or even to public light, because of the difficulties already explained.

From America we have just received a good lesson on a short way with the picket. Not appreciating Mr. Eugene Debs, the notorious strike leader, the Monougal Coal and Coke Company has obtained, through the agency of a shareholder, an injunction from Judge Jackson, of the United States Court, to restrain Mr. Debs and his followers "from in any way interfering with or molesting the management, or the conducting of property of the Company, either by trespassing upon the property of the Company, or by approaching thereto, or inciting its employees to strike, or interfering in any manner whatever, either by word or deed, in the Company's affairs." It is a pity that this country does not deal as summarily with similar outside and arrogant interference in our own labour troubles. If we did, Mr. Burnett's annual Reports on Strikes and Lock-outs would not consist of volumes of three or four hundred pages, summarizing the details of some one thousand odd strikes, and Lord Penrhyn's victory over the mischief-makers would have been consummated several months earlier. Indeed, that dispute—originally artificial—would never have reached the climax of a protracted, unreasonable, and foolish strike.

V.—THE PRACTICE AND LAW IN THE COLONIES AND ABROAD.

For a large part of the information in this chapter acknowledgment is due to the valuable series of "Foreign Reports" issued by the Labour Commission, and compiled by the secretary, Mr. Geoffrey Drage.

UNITED STATES.

Picketing, accompanied by intimidation of the most aggravated character, has been a frequent incident in American railroad strikes. The Report of the Select Committee of Investigation, appointed in 1886, contains abundant evidence of attempts to wreck trains, violence offered to employees remaining at work, the sending of threatening letters, attacks by armed mobs upon yards where labourers were at work, and nocturnal visits to the houses of such labourers by gangs of masked intimidators.

In Delaware, Illinois, Kansas, Maine, Michigan, and Pennsylvania there are special laws with regard to railroad strikes; and Georgia, Idaho, Indiana, Louisiana, Massachusetts, Montana, New Hampshire, New Jersey,

New York, Oregon, Rhode Island, Vermont, and Wisconsin legislate also against intimidation in general. Besides the riots among miners and iron and steel workers, mention is made in the Commissioner of Labour's Report of a case in which "the miners met and proceeded in a body to the dwelling places of the new men, and succeeded in prevailing on the men to quit work, the miners paying their expenses back to the places from which they came."

Similar measures were employed in 1890 by the members of the Boot and Shoe Workers' International Union during a strike in Rochester, New York. New employees were met at the stations and offered their return fares or wages equivalent to those promised by the company. Where these means failed, the strikers attempted to deter employees from entering the factory by abuse and threats of violence.

Laws against blacklisting existed in Massachusetts, Illinois, Oregon, Colorado, and Wisconsin, and there is little room to doubt that the practice has been, and is, widely prevalent. Mr. Carroll D. Wright, speaking of the manufacturers of Fall River, Mass., 1884, says: "Other manufacturers granted that the black list was in existence, and stated that its use was necessary to guard against strikes, one saying: 'If we wanted to black list a man, we would undoubtedly do so.' Another said: 'This [blacklisting] is done by a Committee of the Manufacturers' Board of Trade. A man's name is sent to this Committee, and they examine the list and take action on it. The black list is directed mostly towards

the members of the Mule Spinners' Union, for they cause us the most trouble. For our own protection, we started a secret service, and it has accomplished much good, as it gave us the names and occupations of the most prominent in agitating strikes. There have been twenty-six mule spinners black-listed since last fall.'" The same practice is mentioned in connection with the telegraphers' strike in 1883, and it was admitted by one of the superintendents of the Missouri Pacific line, before the Select Committee of Investigation, that a list of discharged men had been kept by the Missouri Pacific Company, and sent monthly to every point on the line; though it was alleged that this list had been abandoned more than a year before the strike, and the New York Report for 1889 says: "The refusal to reinstate men who have gone out is too frequent to be passed without notice."

The *Statute of Conspiracy* of 1830, in its final form, contained the following sections:—

"Section 8.—If two or more persons conspire.....to commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws, they shall be deemed guilty of a misdemeanour.

"Section 9.—No conspiracies, except such as are enumerated in the last section, are punishable criminally."

In 1870 the New York Legislature took combinations to raise or maintain wages out of the category of

conspiracies to commit acts injurious to trade or commerce. In 1881 the Penal Code, enacted in New York, added to the previous definition of criminal conspiracy a section defining it to be an agreement "to prevent another from exercising a lawful trade or calling, or doing any other lawful act by force, threats, or intimidation, or by interfering or threatening to interfere with tools, implements, or property belonging to or used by another, or with the use and employment thereof." In 1882 the following section was added :—

"Section 170.—No conspiracy is punishable criminally unless it is one of those enumerated in the last two sections; and the orderly and peaceable assembling or co-operation of persons employed in any calling, trade, or handicraft for the purpose of obtaining an advance of wages, or compensation, or of maintaining such rate, is not a conspiracy."

Twenty-four of the States of the Union have conspiracy statutes—viz., Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Michigan, Missouri, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, and Wisconsin.

NEWFOUNDLAND AND CANADA.

There are complaints both from Quebec and from St. John, New Brunswick, with regard to the action of members of the Ship-labourers' Society. In the words of one witness, "these labourers have gone on the

steamer by hundreds, completely crowding her and terrorizing our men, who have quit work and left us, leaving the steamers perfectly idle." The Federal Parliament passed an Act, known as the *Quebec Act*, in 1887, to meet such cases. It provides penalties and imprisonment with hard labour for a term not exceeding three months for any person who interferes with labourers about vessels or uses threats, but it does not prevent labourers from congregating in large numbers on the wharves near to such vessels. This is done both in Quebec and in St. John, and complaints are made that men are intimidated by these means. During the Toronto Street Railway strike fears were entertained that rioting and loss of life might result from the assembling of crowds in the streets to watch the proceedings of the strikers; but these fears were proved to be unfounded.

The evidence taken before the Royal Commission in Ontario indicated that blacklisting was practised by some cotton manufacturers, shipowners, cigar manufacturers; and a somewhat similar system was in use upon the railways. A cigar manufacturer testified that he knew many cigar makers who had been deservedly blacklisted, and that he kept such a list himself. Railway servants have little chance of obtaining employment unless they can show a certificate from their late employer, and they complain that these certificates are sometimes refused out of personal spite. The Quebec iron moulders testify to the existence of black-lists in their industry, and the Nova Scotia miners declare that

miners have been black-listed because they have been prominent in labour organizations.

AUSTRALIA.

The existence of the practice of picketing in Australia is sufficiently proved by the details of recent strikes. As an instance, the Barcaldine Strike Committee were arrested in March, 1891, and brought to trial at Rockhampton in May of that year, on the charge of conspiracy by threats, intimidation, and violence, to induce labourers to "depart from their hire, labourers to join their union, masters to reduce the number of their labourers, and masters to change the description of their labourers." These Acts were penal under the old statute, 6 George IV., repealed in England, but technically still in force in the Colonies. This Act, as we have already seen, really embodies the Common Law on the subject of threats and violence to workmen and others arising out of trade disturbances, and merely enables Justices of the Peace to deal summarily with such offences. The offences with which the members of the Committee were charged existed, therefore, independently of the Act, and were penal at Common Law. The members of the Committee were convicted and sentenced to three years' imprisonment, as well as ordered to enter into recognizances for good behaviour for another year. Other less important offenders were condemned to shorter periods of imprisonment or fined. Beyond certain charges brought against employers of discharging female employees in the clothing trades

because of their connection with labour organizations, there is little evidence of black-listing in Australia.

ITALY.

The following sections summarize the Italian Penal Code (1889) of offences against Freedom of Labour:—

Article 165.—Whoever by force or threats restrains or hinders in anywise the freedom of industry or trade is punishable with imprisonment not exceeding twenty months, and with fine of 100 to 3,000 francs.

Article 166.—Whoever by force or threats brings about, or causes to be continued, a stoppage or interruption of work in order to impose on workmen or on employers or contractors a lowering or rise of wages, or terms different from those already agreed upon, is punishable with imprisonment not exceeding twenty months.

Article 167.—In the case of ringleaders or promoters of the offences specified in the foregoing sections the punishment is imprisonment for any term from three months to three years, and fine from 500 to 5,000 francs.

Exercising compulsion by violence or threats, and threatening with unlawful harm of any serious kind, are also made substantive offences in another chapter. (Ss. 154, 156.)

GERMANY.

As a rule, strikes in Germany are peaceably conducted. Where the strikers render themselves liable to legal penalties, it is rather by disregarding the notice

required before termination of the labour contract than by resorting to violence and intimidation. With regard to intimidation and violence, section 153 of the Code states that "whoever, by the use of bodily force, by threats, insults, or boycotting, induces, or attempts to induce, others to take part in such combinations, or endeavours to ensure their success, or by the same means hinders, or attempts to hinder, others from withdrawing from such combinations, is liable to imprisonment for a term not exceeding three months, unless he has incurred a severer penalty under the General Criminal Code." Some few instances are recorded of violence in connection with strikes, the most notable being the case of the Silesian miners in 1889; but such instances are the exception rather than the rule. In connection with the miners' strike of 1889, it was decided by the Imperial Courts that Section 110 of the Criminal Code is applicable to open incitement to breach of contract. This section runs: "Anyone who publicly, before a crowd of people, or anyone who, by distributing or publicly posting or publicly exhibiting writings or other representations, invites disobedience to the laws or valid ordinances, or to the directions issued by the magistrates within their competence, shall be punished by a fine up to 600 shillings, or by imprisonment with hard labour up to two years."

FRANCE.

In the strike of the Carmaux mines in 1891 (August 15th) picketing was organized with unusual vigour, and

by September 8th the Prefect for Tarn came in person to notify to Calvignac and Baudin that if they continued their attacks on freedom of labour they should both be arrested. The activity continued, however, without these threats of arrest being carried into effect.

It is curious to note the attitude of the Government, who by that time had sent troops to the neighbourhood to preserve order, and who yet did not insist upon the maintenance of freedom of labour for non-syndicated workmen. The members of the syndicates still organized pickets to watch the pits' mouths day and night, and prevent any workmen from entering. At length, in response to a public demand on October 11th, the Prefect sent an order to stop this picketing, to disperse street gatherings, and groups of more than two or three persons. The order was annulled by the refusal of the Mayor to post it. Such defiance was fittingly followed by increased disorder, and by the dynamite outrage, which destroyed five people unconcerned in the conflict, and the author of which remained undiscovered. By this time, however, some arrests had been made by the gendarmerie, and in due course sentences were passed by the Courts at Albi, carrying from eight days to four months, in some cases with fines added.

To one of Mr. R. N. McDougall's letters to the Press we are indebted for the following facts concerning a valuable precedent established in France :—

At the later strike at Carmaux, on August 1st, 1895, at the glass works of M. Resseguier, the socialist deputies,

whose activity for disturbance is assisted by their privilege of free travel on the railways, began, as is usual with them in such cases, to interfere, and were aided by two socialist newspapers. The strike, though greatly prolonged by their efforts, ended in the defeat of the men, who found themselves mostly replaced by others. But M. Resseguier thought he was not sufficiently compensated by this victory for the abuse to which he had been subjected. So he sued M. Jaures and the two newspapers (one published at Paris and the other at Toulouse) for 15,000 francs of damages. The judgment in the first Court of Toulouse was against him. He appealed, and another Court awarded him the compensation he claimed. A further appeal was made by the defendants to the Supreme Court, the Court of Cassation, which has now confirmed the decision of the lower Court.

This decision, which was based on Article 1, 382, of the Civil Code, does not treat intervention in a strike as a crime, but merely as an act which may or may not give rise to damages. Collecting subscriptions and expression of opinion on the merits of a dispute are not regarded as illicit, but violent personal abuse calculated to lead to physical outrage, and deliberate attempts to injure professional or social standing, give the injured party a right to compensation. Where liberty ends and licence begins must be decided on the merits of each case. This seems a reasonable view. Why should a newspaper or a public speaker be allowed to deal out unmeasured abuse to a man just because his employees are on strike?

RUSSIA.

The law of June 3rd, 1886, charged the factory inspectors with the duty of regulating the relations between employers and employed, and established severe penalties for strikes or other violation of the labour contract. Employers who have caused a breach of the peace are liable to imprisonment for not more than three months, and until June, 1893, the law provided that they might be prohibited from ever again carrying on any business. By the law of June, 1893, however, this prohibition was reduced to two years. On the other hand, workmen who refuse work before their labour contract has expired are liable to not more than one month's imprisonment. In the case of a strike or cessation of work with the object of obtaining an advance in wages or other improved conditions, the leaders of the movement are liable to from two to four months' imprisonment. Those who resume work at once when required to do so by the police are exempt from all penalties. If the men on strike force others to come out, prevent them from resuming work, or attack the property of the factory or any person employed therein, the ringleaders and their accomplices are sentenced to imprisonment for a term which varies respectively from four to eight and from eight to twelve months. The factory inspectors hear any complaints on the part of either employers or men at certain hours on two days in each week, and written complaints are also frequently addressed to them.

SWITZERLAND.

In May, 1888, about 120 carpenters in Zürich struck for higher wages and shorter hours; their demands were granted after a strike of seven-and-a-half weeks. On the termination of the strike the associated employers petitioned the Government to pass stricter measures for the protection of individual freedom, especially that intimidation of persons who are willing to work during a strike should be prevented. A counter petition from the workers was drawn up by the workmen's secretary, which deprecated any special measures being taken against workmen on strike. This petition seems to have been successful in averting the legal restrictions desired by the employers, as no such measures have been passed.

The workmen's secretary argued against the restrictions of picketing on the ground that no strike could succeed without it, and that, as strikes were always the workmen's last resource, any laws which rendered them ineffectual would deprive workers of their only weapon, and place them entirely at the mercy of their employers. The present police laws are sufficient to prevent violence.

SWEDEN.

No restriction has been placed by Swedish law on the action of workmen during a strike, unless such action results in a breach of public order, when military assistance is promptly called in. Great disturbances took place in connection with the Norberg mining strike

in 1891, but sentence was not pronounced on the offenders until 1894, when the Supreme Court condemned one of the agitators to four months' and another to three months' hard labour. In view of the difficulty of dealing with such cases under the existing law, a new law was passed in June, 1893, to facilitate the prosecution of agitators. By this law the Public Prosecutor can now take action against any person who forces another to take part in a strike, or prevents him from returning to work. Formerly the task of prosecution devolved upon the sufferer himself, with the result that he generally neglected to take the necessary measures out of fear for the consequences.

DENMARK.

Danish law confers no power on the authorities to prevent combinations of employed, or to forbid strikes, but all possible efforts are made to put a stop to the intimidation of those who continue at work during a strike.

HUNGARY.

Section V.—concerning Fieldworkers and especially Day Labourers—paragraphs 86 and 94, of the Law 13 of 1876, which regulates the relations of employers and employed (Masters and Servants), is as follows :—

(86) In the case of a dispute arising, from any cause whatever, labourers are not entitled to refuse to begin work, to strike work on their own authority, or to absent themselves from the place of work ; but they are bound

to wait for the intervention of the duly-qualified authorities, which must follow within three days from the receipt of the complaint, and till then they must not refuse to begin or continue their work.

(94) Whoever, on any pretext, induces field labourers who have already been engaged by another employer to break their contract is liable to a fine of from 20 to 100 florins, and has also to make compensation for the damage done, and for any expenses resulting therefrom, and to send back the labourers to their rightful employers.

VI.—THE PRESENT LEGAL POSITION IN ENGLAND.

(a) A Summary of English Legislation during the Century.

THE Royal Commission appointed in 1824 to inquire into the condition of the labour laws resulted, in 1825, in the Act of 6 Geo. IV., c. 129. Section 3 of this Act enacts as follows:—

"Any person who, with a view to compel journeymen to leave their employment, or to return work unfinished, or to prevent their hiring themselves, or to force them to belong to trade clubs, or to pay fines, or to force any other person to alter the mode of carrying on his business—

1. Uses violence to person or property; or
2. Threats or intimidation; or
3. Who molests or in any way obstructs such journeyman or other person,

shall, upon conviction, be liable to a maximum penalty of three months' imprisonment, with or without hard labour."

In 1859, 22 Vict., c. 34, was passed, which enacted that a combination of workmen which, by peaceable and reasonable means, and without threat or intimida-

tion, direct or indirect, attempts to raise the rate of wages, or shorten the hours of labour, etc., shall not be deemed to molest or obstruct within the above section.

In 1871 was passed a statute which repealed 6 Geo. IV., c. 129. Section 1 of this Repeal Act may be summarized as follows :—

Any person who shall do any of the following acts, *i.e.*:—

1. Use violence to any person or property.
2. Threaten or intimidate any person in such manner as would justify a Justice of the Peace, on complaint before him, to bind over such person so threatening or intimidating to keep the peace.
3. Molest or obstruct any person in manner defined in this section with a view to coerce such person (in furtherance, that is, of trade disputes),

shall be liable, upon conviction, to a maximum penalty of three months' imprisonment, with or without hard labour. A person for the purposes of this Act shall be deemed to molest or obstruct another person in any of the following cases :—

(i.) If he persistently follows, or

(ii.) Hides tools, etc., of, or

(iii.) Watches or besets, such other person.

Provided that no person shall be liable to any punishment for conspiracy on the ground of restraint of trade, unless he commits one of the offences hereinbefore specified, with the object of coercing as hereinbefore mentioned.

In 1875 *The Conspiracy and Protection of Property Act*, 28 and 39 Vict., c. 90, was passed. To sections 3 and 7 of this Act we have already referred in detail.

(b) Legal Procedure.

According to Mr. R. J. N. Neville, in his concise pamphlet on "Strikes," issued in 1890, the following is a short summary of procedure under the Conspiracy Act. The tribunal appointed by the Act is primarily that of a Court of Summary Jurisdiction, but in certain cases, at the option of the accused, the offence may be tried on indictment before a jury. If the accused elect to be tried by jury, the complainant should ordinarily be asked whether he wishes to prosecute, for the Legislature has not thought fit to allow him costs of the prosecution, and therefore he should not be compelled to prosecute against his will, except under very exceptional circumstances. If he elect to prosecute, the Court then proceeds to consider whether there is sufficient evidence to warrant a committal. If the Court commit the accused for trial, the warrant of commitment must be carefully framed so as to show the jurisdiction of the Court to commit for trial by reason of the defendant's objection to the summary disposal of the case. The committal will, in general, be for trial at the Quarter Sessions. An appeal lies to a Court of Quarter Sessions against any conviction made under this Act by a Court of Summary Jurisdiction; such appeal is final. A case may be applied for and stated on any point of law arising on

any information under the Act pursuant to 20 and 21 Vict., c. 43 (1857).

The net result of no costs being obtainable is well put by Mr. J. E. Davis in his work, "Labour Laws": "The complainant will not like the idea of a prosecution conducted entirely at his own expense, and will, therefore, avoid that probable contingency by not incurring the preliminary cost and loss of time of an information and summons. On the other hand, an accused person will doubtless exercise his privileges of objecting to the justices' jurisdiction for one or other of the following reasons: (1) an honest desire to be tried by a jury; (2) the belief that the complainant will in consequence decline to prosecute; (3) to avoid the complainant's costs in the Court of Summary Jurisdiction and immediate imprisonment; (4) to vex and harass the complainant, toward whom he has already done an intentional wrong."

It should be added that the process by which criminal proceedings are commenced before a Court of Summary Jurisdiction is termed an information. It need not be in writing, though it is advisable for the protection of the justice issuing the summons that it should be. After the information has been laid, a summons is generally issued, and in default of appearance a warrant to apprehend.

The Labour Commission, in its Report, thus summarizes the right of civil action:—

> "It can hardly be denied that conduct of the kind referred to in the cases of *Gibson* v. *Lawson*

and *Curran* v. *Treleaven*, although held not to be intimidation liable to penal consequences within the meaning of the Act of 1875, may inflict great hardship upon employers, and still more upon non-unionist workmen, who may very possibly, in some cases, practically be deprived of employment unless they consent to join associations of which they disapprove. The question arises whether any civil remedy remains to the employer or non-unionist workman. It must be observed that, although the Act of 1875 exempts conduct which does not amount to intimidation, in the same sense which the Courts give to intimidation, from penal consequences, it leaves untouched the right, if any, of persons injured by such conduct to bring civil actions to recover damages. It may be true that, even where the employer or non-unionist workman may have the civil remedy referred to, that remedy may yet in many cases be practically valueless. Although the discharge of the workman from employment may be due to decisions taken by a trade union, and consequent action by some official on its behalf, the trade union cannot be sued, nor can damages be recovered from its collective funds. In the recent case of *Temperton* v. *Russell* and others, the plaintiff, who carried on business as a builder, sued the officers of three trade unions, 'as well on their own behalf as on the behalf of and representing all the members of each of the said societies and joint committees to which they

severally belong,' for damages, and also for an injunction to restrain the trade unions and joint committees from molesting him in the conduct of his business. It was held by the Lord Chief Justice and Mr. Justice Hawkins that the plaintiff was not entitled to sue the trade union officers, who were defendants in their representative character, but only as individuals; and this decision was confirmed by the Court of Appeal. Damages were subsequently recovered in this action against the officials of the three trade unions, and an injunction obtained restraining the defendants. This case shows that persons injured by the action of trade unions and their agents can only proceed against the agents personally, and, whilst they may obtain verdicts against them, they may, in many easily conceivable cases, be unable to recover adequate damages. This difficulty is one which illustrates the inconvenience which may be caused by the existence of associations having, as a matter of fact, very real corporate existence and modes of action, but no legal personality corresponding thereto."

The case of *Bailey* v. *Pye*, and other recent cases referred to in chapters iv. and vii., give additional weight to this paragraph.

Sir William Erle, in his report on trade unions, 1869, puts the whole matter in a nutshell: "At common law every person has individually, and the public also have collectively, a right to require that the course of trade

should be kept free from unreasonable obstruction. Every person has a right under the law, as between him and his fellow-subjects, to full freedom in disposing of his own labour, or his own capital, according to his own will. It follows that every other person is subject to the correlative duty arising therefrom, and is prohibited from any obstruction to the fullest exercise of this right which can be compatible with the exercise of similar rights by others."

(c) Unlawful Assembly and Riot.

The following reference to the legal aspect of unlawful assembly and riot may, it is hoped, be found convenient. An unlawful assembly is any assembly of persons attended with circumstances calculated to excite alarm; but, in order that it be unlawful, there must be either an illegal object, or, if the object be legal, the mode of carrying it out must be tumultuous. If persons assemble together to obstruct the police, they are all guilty of unlawful assembly, whether a riot takes place or not. Where persons assemble together for a purpose, which, if executed, would make them riotous, and separate without accomplishing their purpose, they are, nevertheless, guilty of unlawful assembly.

A riot, a graver offence, is a tumultuous disturbance of the peace by three persons or more unlawfully assembling together, and who, being together, continue together for the common purpose of executing some unlawful act, or of executing any act whatsoever in such a manner or under such circumstances of violence, threats, tumult,

numbers, display of arms, or otherwise, as are calculated to create terror and alarm among the Queen's subjects, and who, in either case, wholly or in part execute such purpose.

Riot is at common law a misdemeanour, but under certain circumstances it may constitute a felony. To constitute the crime of riot, three persons at least must be convicted, and the tumult must be calculated to inspire alarm. If one person can be shown to have been, in fact, alarmed, that is sufficient to support the indictment. It is not necessary that there should be any actual display of violence. The reading of the Riot Act is not necessary to constitute the assembly a riot, for at common law a riot is a misdemeanour, and punishable as such; and if the Riot Act be read, and the assembly, consisting of twelve or more persons, do not break up and disperse within one hour after the reading of the proclamation, the offenders are guilty of felony, and are punishable with a maximum penalty of penal servitude for life or three years' imprisonment with hard labour. Before the proclamation can be read there must be a riot. It is also a felony to oppose or obstruct the reading of the proclamation. When a mob proceed to commit felonious destruction of property within 24 and 25 Vict., c. 97, sec. 11, a riot, though not felonious in its inception, becomes so, even though the Riot Act may not have been read.

VII.—FREE LABOUR *v.* TRADE UNION TYRANNY.

THE case of *Bailey* v. *Pye* has re-opened the old question of the legal responsibility of trade unions. It is a question that only indirectly comes within the scope of this work. We cannot but recognise the extreme difficulty of increasing the already complex legislation dealing with trade combinations. Our suggestions deal mainly with a nefarious practice—legal, but a risky expedient—directly arising out of modern trade unionism, and we urge them because we believe them practicable, and immediately so. "Whether it would be desirable that trade unions should be capable of suing and being sued as trade unions may be a difficult question; but it should be borne in mind, when it is sought to amend or modify the law with regard to picketing or conspiracy, that this anomalous position of theirs is of material importance in making them more powerful for mischief than they otherwise might be," says a leading Scotch daily newspaper. We hope that the complement to our suggestions—an Act of Parliament giving a clear statement of the legal position of trade unions—may speedily be passed. With this end in view, while summarizing

the position with regard to picketing, we shall finally refer briefly to this larger question which is involved.

The points we have sought to bring out are, that although "peaceful picketing" is legal, it does not really exist, and that picketing as a deliberate act should therefore, by the indirect means we have indicated, be made illegal, because—

(1) The difficulty, delay, and expense of putting the existing remedial machinery into motion renders existing law almost valueless;

(2) As there is no definition of "intimidation," and as judicial decisions in various parts of the country are therefore inconsistent one with the other, it is not possible that justice can be impartially administered as regards either employers or employed;

(3) Although you cannot punish "the black looks and rough words which citizens occasionally cast at each other," nor compel the majority to have a good opinion of those who dissent from them, the law can, and should, protect their property and persons, and should refrain from deliberately encouraging, by permitting inconsistency of interpretation, such looks and words;

(4) Labour contracts should be held as inviolate as any other legal contracts;

(5) Much dissatisfaction with the present law exists on both sides, and public opinion asks for Parliamentary action.

To this end we have suggested that section 7 of the *Conspiracy and Protection of Property Act* should be so amended as to read:—

Section 7.—Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority—

1. Uses, or *threatens to use*, violence to such other person, or his wife and children, or injures his property; or,

2. Persistently follows such other person about from place to place; or,

3. Hides any tools, clothes, or any other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or,

4. Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or,

5. Follows such other person with two or more persons in a disorderly manner in or through any street or road, shall, on conviction thereof by a Court of Summary Jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding £20, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section *unless such attendance cause an*

obstruction of the highway at or near any house or place.

We have further suggested an amendment of the law dealing with unlawful assembly to bring offenders under summary jurisdiction, instead of, as at present, leaving them for trial at the next Assizes on an indictable offence.

In support of these suggestions we have cited the Trade Union Commission of 1866 and the Labour Commission of 1891, and, while pointing out the present diversity of interpretation of the existing law, we have adduced such strong, valuable, and irreproachable testimony from unimpeachable authorities that the case for further legislation is, in our opinion, proved up to the hilt. Even a trade union advocate like Mr. George Howell admits that the spirit of the age is against picketing. And Lord Salisbury "concurs.....in thinking that picketing, as at present practised, appears to be open to considerable objection in many ways when it appears to involve molestation and intimidation." Lord Salisbury acknowledges that "the interpretation of the present law is certainly not in accordance with the views of those by whom the Bill was framed."

From the Colonies and abroad we have precedents of similar legislation, although in some cases of a more advanced, and, as it appears to us, undesirable, character. But, in support of our very moderate proposals, it is sufficient to point to the successful action of the United States, Italy, Germany, Russia, and Hungary.

"It is one of the anomalies of trade unionism that,

while the unions are powerful corporations for purposes of combat, both in the streets and in the law Courts, they are for legal purposes resolved into their individual elements directly that judgment goes against their leaders. The officers of a union may engage in a series of illegal and tyrannical acts themselves, and incite others to do so. The calculated effect of those acts may be due to the fact that notoriously they are the work of an organization. Controversies arising out of them may be fought out in the Law Courts with what are notoriously the funds of that organization. But the moment the victims or the opponents of the union begin proceedings, the process of disintegration sets in, and if they get judgment, it at once becomes complete for the purposes of that particular litigation. So long as it is a question of formulating trade demands, of offering and receiving offers of terms, of delivering ultimatums, of setting in motion and controlling the machinery of strikes, and directing the system of pickets which alone makes some strikes effective, the "organizers" and "secretaries" and so forth are invested with a representative character. The importance of what they say and of what they do, and of what they direct others to do, depends upon that fact. They speak in the name of a body of their fellows, greater or smaller as the case may be, which in turn frequently is allied with similar bodies throughout the country. But when it comes to the question of framing a writ against them, these officers of a well-drilled army, acting on a common plan and disposing of a common purse, sink at once into individual artizans with no

greater and no less responsibilities than any other private citizens. The union funds are still available to fight the case to the end, and to enforce judgment against the employer, if the unionists are successful. But if the employer wins, he has no legal means of extracting payment of the damages awarded him. He may sell up this official of the union, and make a bankrupt of the other; but, as a rule, the officials are not worth powder and shot, and the union funds, which may be ample, are, of course, unaffected by the errors of the private individuals who administer them. When the next strike or the next lawsuit comes on, the war-chest is undepleted, and the union resumes and exercises all its corporate powers."

So said the *Times* on January 15th, 1897, commenting on the case of *Bailey* v. *Pye*. On May 18th Messrs. Bailey (as we have already stated) wrote to us that, as the result of executions against the principal defendants to recover £1,217 awarded at the trial, they have obtained the paltry net sum of £5. "Our total loss," they say, "in resisting this tyranny (with seven months' picketing) is over £2,000." Messrs. Bailey have, therefore, bitter justification for their complaint, "both as regards trade union exemption from financial liability and picketing as now applied, from which employers generally are suffering."

Any alteration in the Trade Union Acts will, of course, affect equally associations of employers and employed. If trade unions are rendered liable to sue and be sued, the same privileges and responsibilities attach to

employers' associations. Section 4 of the *Trade Union Act* of 1871 does not prohibit collective agreements, as such, but declines to acknowledge them enforceable at law. The objects of the Act appeared to be, while freeing trade unions from the last remains of their former character of criminal conspiracies and giving them full protection to their property, (1) to prevent them from having any legal rights against their members, or their members against them; and, next, (2) to prevent their entering into any legally-enforceable contracts as bodies with each other, or with outside individuals, except with regard to the management of their own funds and real estate. Some observations, appended to the Labour Commission Report, by the Duke of Devonshire, Sir David Dale, Sir Michael Hicks-Beach, Sir F. Pollock, and Messrs. Leonard H. Courtney, Thomas H. Ismay, G. Livesey, and W. Tunstill, recommend, as an ultimate solution, the granting of the power to such bodies to acquire legal personality sufficient to enable them to enter into collective agreements, with the legal sanction of collective liability in damages for breach of agreements.

The history of "collective bargaining" has hitherto been bound up with the history of trade unionism. In the unorganized trades the natural "higgling of the market" still prevails in settlement of wage-rates; but "collective bargaining" has become an established feature in all the industries in which labour has organized itself—by whatever means—into a more or less powerful combination. We cannot, however, now discuss the

economic effects induced by the growth of collective bargaining. Strikes accompany it. But, again, movements such as voluntary conciliation and arbitration, co-operation, profit-sharing, have sprung up as a natural check upon strikes. Collective bargaining brings serious evils in its train, and their influences have to be weighed before deciding whether the Legislature can justifiably recognise it as a legitimate system. On the other hand, cases like this of Messrs. Bailey demand some urgent relaxation of the statutory restrictions of 1871. But the most powerful argument in favour of giving collective action legal collective responsibility is the sentimental whine of the Labour Commission trade unionists, Messrs. Abraham, Austin, Mawdsley, and Mann, embodied in their Minority Report :—

> "To expose," they say, "the large amalgamated societies of the country, with their accumulated funds, sometimes reaching a quarter of a million sterling, to be sued for damages by any employer in any part of the country, or by any discontented member or non-unionists, for the action of some branch secretary or delegate, would be a great injustice. If every trade union were liable to be perpetually harassed by actions at law on account of the doings of individual members ; if trade union funds were to be depleted by lawyers' fees and costs, if not even by damages or fines, it would go far to make trade unionism impossible for any but the most prosperous and experienced artizans."

In other words, it would entirely remove the means of livelihood from the professional agitator, and utterly annihilate the chances of such insolent interference in an employer's concerns as is typified in the Penrhyn strike.

A paper urging a definite legislative expression of the legal rights and responsibilities of trade unionism could not but be incomplete without a reference to the important test case of *Allen* v. *Flood*, now under consideration by the House of Lords. In this suit the appellant, Allen, is the London District delegate of the Boilermakers' Union, and the respondents, Flood and Taylor, are shipwrights and non-society men. The two latter, in 1894, undertook some ironwork on an iron ship. Such work performed by shipwrights is apparently a breach of the peculiar etiquette pertaining to trade unionism; it is, according to their intricate "demarcation" rules, work reserved for unionist boilermakers only. Subsequently, when these shipwrights were engaged on repair work on a ship lying in the Regent's Dock at Millwall, Allen—in revenge, as the Courts have now decided—took it upon himself to interview the managing director of the Glengall Iron Company, the shipwrights' employers, and to insist on their dismissal, threatening, on non-compliance, to "call out" all the members of the union. On their dismissal Flood and Taylor, by action against Allen in the Queen's Bench Division, were awarded £20 damages each. The decision was upheld by the Court of Appeal, and the trade unionists consequently carried Allen's case to the Lords.

From this sketch of the case it will be seen that indirectly involved is the precise interpretation to be put upon the word "intimidation." The Judges of the Supreme Court, whom the House of Lords summoned to hear the re-arguing of the case in March last, a short time since delivered their judgment. On the immediate issue before them—viz., whether, when a man is discharged by an employer, owing to a threat of a strike being made if he is kept at work, the discharged man has any claims against the person who makes the representations against him—the majority decided that he has. The following ten judges—Mr. Justice Kennedy (who tried the case originally), the Master of the Rolls (Lord Esher), and Lords Justices Lopes (now Lord Ludlow) and Rigby, forming the Court of Appeal, and Justices Hawkins, Cave, Wills, Grantham, and Lawrence (all of the Queen's Bench Division), and Mr. Justice Worth (of the Chancery Division)—have thus decided against the unionists. The two minority are Justices Mathew and Wright.

The following weighty words of Sir Henry Hawkins are well worth placing on record: "In this country every man who honestly endeavours to earn his livelihood by his trade or occupation is entitled to do so free from any molestation or hindrance, and anyone who interferes with him, as the appellant has done, without just cause or excuse, does him a wrong which is actionable."

It is not unreasonable to suppose that the Lords will accept the advice of the ten judges and endorse their

opinions. In that case it will be practically rendered illegal for a delegate, at the instigation of his union, to induce an employer to dismiss a non-society man ; such action will be legally (as it is morally) malicious, and free labour will have a just protection by the law and a new weapon to wield against trade union tyranny.

There are, however, in conjunction with this point, the chief one, two very important dependent incidents affecting free labour. The original case decided that the members of a trade union, as represented by the president and secretary, are not liable for the action of a district delegate. This decision needs carrying to Appeal and revising. If the Legislature accepts the principle that an employer is liable for all injuries inflicted by his servants in the conduct of his business, it is not too much to ask the Legislature to lay down as specific law the principle that the chief officers and directors of a trade union are liable for the acts of their subordinates in connection with the union. This is especially necessary for the protection of the person, as in the case of picketing with violence.

The other point is the question of the recovery of damages. We have already seen how, in *Bailey* v. *Pye*, an infinitesimal percentage only has been obtained. For the consideration of Parliament during the next Session we would strongly advise a Bill (1) giving expression to the decision we anticipate from the Lords, (2) rendering trade unions liable to the extent above indicated, and (3) allowing a more or less lengthy period of imprisonment with hard labour (which will give district delegates and other

rogues a pleasant and healthy change—pleasant for the community, healthy for them), in default of the payment in full of the damages a trade union defendant is called upon to pay for his fun. Bankruptcy proceedings are obviously not sufficiently summary.

Such legislation, supplementing the definite proposals we have made with regard to picketing, will probably be found a workable substitute for the elaborate proposals which have been advanced in some quarters to give trade associations a corporate standing.

Legislative action is on principle to be deplored. It is the last resort for absolute necessity. We cannot too strongly urge freedom of individual contract, and to this end we welcome an attempt at voluntary solution by the formation of a National Employers' Association to show if possible, and by the simple means of turning the coercive weapons of trade unionism against itself, that the real management of the country's commerce and business is in the hands of the employers, and not in the hands of trade union officials, spurious or lawful. Such an Association will show the workmen that their best friend is the employer, and that it is a foolish policy to throw up £100 worth of wages to starve on a £20 subsistence allowance because a rowdy, brazen-lunged agitator has ordered it.

To prevent any possible misunderstanding on the question of trade union combination, it will be sufficient to endorse the views contained in the *Times'* leading article on the settlement of the Penrhyn Quarry dispute. In that dispute the right of combination was never in

question, and in this book (and in this chapter in particular) such right has never been challenged. The employed as well as the employers have equal rights of combination, but no rights of wanton interference. We cordially agree with Mr. Young's letter of May 27th last, in which he expressly recognises the right of the workmen to act on the principle of "the cause of one being the cause of all," which, as the *Times* says, we take it, is the principle of combination in its broadest expression.

The sole cause of the dispute was the question of outside interference. In this particular instance picketing was not a feature of the dispute, but exactly the same principle was involved. The essential basis of picketing is interference. No apology is therefore needed for giving, in the words of the *Times* of Monday, August 23rd, 1897, a brief statement of the cause of the strike, and of its victorious ending in favour of Right :—

> "When the present Lord Penrhyn took over the management of the quarry, the union leaders had usurped a power in excess of what has just been described [right of combination].....their usurpation was curbed by the rules which Lord Penrhyn laid down, and to which he adheres, and.....the struggle just ended has not been either for the right of combination or for any interest of the workmen at large, but for the regaining of the power of interference in the management of the property formerly possessed by the Quarry Committee. That committee, consisting, it need hardly be said, of union leaders, had arrogated to itself, and

has just been struggling again to arrogate to itself, the right to intercept all representations as to grievances which the men might wish to make to their employer, to veto such of them as it thought fit, and to prosecute such as might suit itself. In practice the result was, and would be again, that Lord Penrhyn was to a great extent superseded in the management of his own property by this irresponsible body which thrust itself between him and his workmen; while, as regards the workmen themselves, no certain redress existed for such of them as did not choose to join the union and bow to the behests of its Executive. The first clause as it now stands, as it stood last May, as it stood last September, and as it has been worked for the last twelve years, gives every workman access to the local manager, with appeal to the general manager, and, finally, in cases of importance, to Lord Penrhyn himself. The clause gives the same access to any deputation of workmen so long as it *bonâ fide* represents a class that may either think itself aggrieved or may see fit to make the grievance of an individual its own. [How is it that so many daily papers, including, we regret to say, the *Daily News*, have deliberately denied the insertion of this clause in the agreement of August 18th? Surely leading articles on an important industrial matter of this nature are not "written up" from mere chatter and unauthenticated sources?] But it refuses to permit a standing committee of union

leaders to constitute itself the sole medium of communication between Lord Penrhyn and his workmen, and to use that position to coerce the workmen on the one hand and the employer on the other. The men can combine as they please, and the union can form as many Quarry Committees as it pleases. Lord Penrhyn has nothing to say against these proceedings, but he is determined that no Quarry Committee shall manage his quarry over his head, or, so far as he can prevent it, tyrannize over men who may not wish to place themselves under union dictation."

VIII.—A SUMMARY MEMORANDUM.

THE following Memorandum on Picketing may be said to fairly summarize the points we have endeavoured to bring out and to express concisely in the preceding pages :—

MEMORANDUM ON PICKETING.

With Suggestions to Employers.

Under the Conspiracy and Protection of Property Act, 1875, picketing as moral suasion is legal when its sole object is to obtain or communicate information.

This legality is, however, purely fictional, since in practice all picketing carried on during a strike inevitably exceeds peaceable conversation.

Picketing, therefore, becomes an indictable offence at common law, and such excesses are usually committed as should justify con-

viction under the Police Act, or law dealing with unlawful assembly.

Interim injunctions to restrain illegal threats to some extent destroy the power of trade unions as regards picketing.

But the difficulty, delay, and expense of putting the existing remedial machinery into motion renders existing law almost valueless to individual employers.

Further, the language of the Act of 1875 is left so uncertain—there being no authoritative definition of "intimidation"—that judicial decisions vary in different parts of the country, and justice can be impartially administered neither to employers nor to employed.

Although the law cannot punish black looks and rough words, the law can and should protect property and person, and should refrain from deliberately encouraging, by permitting inconsistency of interpretation, such looks and words.

Labour contracts should be held as inviolate as any other legal contracts.

Among both employers and employed much dissatisfaction exists with regard to the existing state of the law.

The Trade Union Commission of 1866 acknowledged the difficulty of dealing with the question of picketing, but at that time saw no clear way to advise legislative repression. The 3rd and 7th sections of the Act of 1875 were ultimately framed with a view to indirectly check trade union aggression. The Labour Commission of 1891, appreciating the added difficulty to which this Act has given rise, suggested as an amendment that the first sub-section of section 7 read thus: "Uses or threatens to use violence to such person or his wife or children or injures his property," omitting the ambiguous word "intimidate."

Picketing under the various guises of boycotting, threats, obstructions, blocking, bombarding, intimidation, assault, terrorism, and outrage, has to a considerable extent coerced independent labour into the ranks of the fighting trade unions. As benefit and friendly

societies they would be far less patronised. This is the secret of the growth of certain trade unions.

At present trade unions are combinations with many rights but no duties. Instance their demands to appoint and discharge managers, foremen, and overlookers; to forbid the employment of non-unionists; to initiate departmental committees of management; and generally to control the employers' business so far as the outgoings to their members and the conditions of their employment are concerned. The securing of profit and trade risks are all they desire to leave to the employers.

The need for imposing legal responsibilities on trade unions is almost universally acknowledged. The Labour Commission, presided over by the Duke of Devonshire, pointed out this anomaly of legal recognition without legal responsibility.

Even so staunch a trade union advocate as Mr. George Howell admits that public opinion is against picketing.

Sir Frederick Pollock regrets the uncertain wording of the 7th section of the Conspiracy and Protection of Property Act.

Lord Salisbury concurs in thinking that picketing, as at present practised, appears to be open to considerable objection in many ways when it appears to involve molestation and intimidation (which, it should be added, it always does involve).

Bodies of such varied representative capacity as the Chamber of Shipping of the United Kingdom, the Aberdeen Trades Council, and the Trades Union Congress have recently passed resolutions calling for legal action in the matter.

In respect to legislation the United States, Italy, Germany, Russia, and Hungary are already in advance of us.

Pending Parliamentary action the formation of a "Free Labour Protection Association" is suggested.

Employers in every industry, above all things, should organize and confederate to prevent any further confiscation of their

property and destruction of their civil rights.

Such an Association would have at its back a fund to enable it to carry to appeal test cases of the efficiency or otherwise of the existing law for the protection of non-unionists, and cases of prosecution failing through faulty administration.

It would especially act as a combination to suppress picketing, by watching all important strikes, picketing pickets, and prosecuting all strikers who, either in numbers or methods, when picketing, exceed the licence given them by the existing law.

The Association would thus defeat the evils of trade unionism by turning the weapons of trade unionists against themselves.